

Veterans’ Entitlements (Attribution of Income — Ineligible Deductions) Determination 2020

Instrument 2020 No.R2

The Repatriation Commission, under sections 52ZZO and 52ZZZO of the *Veterans’ Entitlements Act 1986*, makes this Determination.

Dated this 25th day of February 2020

The Seal of the )

Repatriation Commission ) SEAL

is affixed hereto in the )

presence of : )

Elizabeth Cosson Donald Spinks

**ELIZABETH COSSON DONALD SPINKS**

**AM CSC AM**

**PRESIDENT COMMISSIONER**

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Part 1 Preliminary

1 Name of Determination

This Determination is the *Veterans’ Entitlements (Attribution of Income — Ineligible Deductions) Determination 2020*.

2 Commencement

This Determination commences the day after it is registered on the Federal Register of Legislation.

**3 Revocation**

Schedule 8 (*Veterans’ Entitlements (Attribution of Income – Ineligible Deductions) Determination 2001*- Instrument 2014 No. R70) of the *Veterans’ Affairs (Legislative Instrument Re-making Exercise) Instrument 2014* (Instrument 2014 No. R62) is revoked*.*

4 Definitions

In this Determination:

***Act*** means the *Veterans’ Entitlements Act 1986*.

***assessable income*** means assessable income for the purposes of *ITAA 1936* or *ITAA 1997*.

***ITAA 1936*** means the *Income Tax Assessment Act 1936*.

***ITAA 1997*** means the *Income Tax Assessment Act 1997*.

Part 2 Ineligible deductions and ineligible parts of deductions

Division 2.1 Ineligible deductions

5 Ineligible deductions — *ITAA 1936* and *ITAA 1997*

(1) For subsection 52ZZO(3) of the Act:

(a) an allowable deduction for the purposes of a provision of *ITAA 1936* mentioned in an item in Part 1 of Schedule 1 is an ineligible deduction; and

(b) an allowable deduction for the purposes of a provision of *ITAA 1997* mentioned in an item in Part 2 of Schedule 1 is an ineligible deduction.

(2) For subsection 52ZZZO(3) of the Act:

(a) an allowable deduction for the purposes of a provision of *ITAA 1936* mentioned in an item in Part 1 of Schedule 2 is an ineligible deduction; and

(b) an allowable deduction for the purposes of a provision of *ITAA 1997* mentioned in an item in Part 2 of Schedule 2 is an ineligible deduction.

Division 2.2 Ineligible parts of deductions

6 Ineligible part of amount of salary or wages

(1) For subsection 52ZZO(5) of the Act, this section applies if:

(a) a company or a trust pays a wage or salary (the ***amount paid***) to an individual (the ***wage or salary earner***) who is:

(i) an attributable stakeholder of the company or trust; or

(ii) an associate, within the meaning of paragraph 52ZQ(1)(e), (h), (i) or (j) of the Act, of an attributable stakeholder of the company or trust; and

(b) the amount paid is an allowable deduction of a kind mentioned in paragraph 52ZZO(1)(a) of the Act; and

(c) the amount paid exceeds an amount that represents reasonable remuneration for the wage or salary earner having regard to:

(i) the period to which the amount paid relates; and

(ii) the work performed by the wage or salary earner during that period; and

(iii) the relevant qualifications or skills of the wage or salary earner; and

(iv) remuneration paid to individuals, with comparable qualifications or skills, performing work that is comparable to that performed by the wage or salary earner; and

(v) other relevant circumstances affecting the employment of the wage or salary earner.

(2) For subsection 52ZZZO(5) of the Act, this section applies if:

(a) a company or trust that carries on a primary production enterprise pays a wage or salary (the ***amount paid***) to an individual (the ***wage or salary earner***) who is:

(i) an attributable stakeholder of the company or trust; or

(ii) an associate, within the meaning of paragraph 52ZQ(1)(e), (h), (i) or (j) of the Act, of an attributable stakeholder of the company or trust; and

(b) the amount paid is an allowable deduction of a kind mentioned in paragraph 52ZZZO(1)(a) of the Act; and

(c) the amount paid exceeds an amount that represents reasonable remuneration for the wage or salary earner having regard to:

(i) the period to which the amount paid relates; and

(ii) the work performed by the wage or salary earner during that period; and

(iii) the relevant qualifications or skills of the wage or salary earner; and

(iv) remuneration paid to individuals, with comparable qualifications or skills, performing work comparable to that performed by the wage or salary earner; and

(v) other relevant circumstances affecting the employment of the wage or salary earner.

(3) The amount by which the amount paid, referred to in paragraph (1)(a) or (2)(a), exceeds the reasonable remuneration referred to in paragraph (1)(c) or (2)(c), is an ineligible part of the relevant allowable deduction.

7 Ineligible part of amount of interest on borrowings

(1) For subsection 52ZZZO(5) of the Act, this section applies if:

(a) a company or a trust borrows money for the purposes of carrying on a business; and

(b) the interest payable on the money borrowed is an allowable deduction of a kind mentioned in paragraph 52ZZO(1)(a) of the Act; and

(c) the interest paid exceeds an amount that represents a reasonable rate of interest on the money borrowed having regard to:

(i) the terms and conditions of the loan; and

(ii) standard commercial interest rates at the time that the loan was made; and

(iii) the kind of business carried on, or the way in which assessable income is gained or produced by the business.

(2) For subsection 52ZZZO(5) of the Act, this section applies if:

(a) an entity that carries on a primary production enterprise borrows money for the purposes of carrying on a business; and

(b) the interest payable on the money borrowed is an allowable deduction of a kind mentioned in paragraph 52ZZZO(1)(a) of the Act; and

(c) the interest paid exceeds an amount that represents a reasonable rate of interest on the money borrowed having regard to:

(i) the terms and conditions of the loan; and

(ii) standard commercial interest rates at the time that the loan was made; and

(iii) the kind of business carried on, or the way in which assessable income is gained or produced by the business.

(3) The amount by which the interest paid, referred to in paragraph (1)(c) or (2)(c), is greater than the reasonable rate of interest referred to in that paragraph, is an ineligible part of the relevant allowable deduction.

8 Trading stock of business — election under s 70-45 of *ITAA 1997*

(1) For subsection 52ZZO(5) of the Act, this section applies if:

(a) a company or trust values trading stock of a businessowned or controlled by the company or trust using:

(i) a valuation method at the start of an income year, giving an amount (the ***first valuation***); and

(ii) a different valuation method in accordance with an election made under section 70-45 of the *ITAA 1997* at the end of the income year, giving an amount (the ***second valuation***); and

(b) the first valuation exceeds the second valuation; and

(c) the ordinary income of the company or trust from the business is reduced by the amount of any excess of the first valuation over the second valuation (the ***allowable deduction***); and

(d) the allowable deduction exceeds the difference (if any) in the value of the trading stock if its value at the end of the income year were worked out by using the same valuation method used for the first valuation.

(2) The amount by which the allowable deduction, referred to in paragraph (1)(c), is greater than the difference in the value of the trading stock, referred to in paragraph (1)(d), is an ineligible part of the allowable deduction.

9 Trading stock of primary production enterprise — election under s 70-45 of *ITAA 1997*

(1) For subsection 52ZZZO(5) of the Act, this section applies if:

(a) an entity carrying on a primary production enterprise values trading stock of the enterprise using:

(i) a valuation method at the start of an income year, giving an amount (the ***first valuation***); and

(ii) a different valuation method in accordance with an election made under section 70-45 of the *ITAA 1997* at the end of the income year, giving an amount (the ***second valuation***); and

(b) the first valuation exceeds the second valuation; and

(c) the entity’s income from the enterprise is reduced by the amount of any excess of the first valuation over the second valuation (the ***allowable deduction***); and

(d) the allowable deduction exceeds the difference (if any) in the value of the trading stock if its value at the end of the income year were worked out by using the same valuation method used for the first valuation.

(2) The amount by which the allowable deduction, referred to in paragraph (1)(c), is greater than the difference in the value of the trading stock, referred to in paragraph (1)(d), is an ineligible part of the allowable deduction.

10 Trading stock of business — election under s 70-50 of *ITAA 1997*

(1) For subsection 52ZZO(5) of the Act, this section applies if:

(a) a company or a trust values trading stock of a business owned or controlled by the company or trust using:

(i) a valuation method at the start of an income year, giving an amount (the ***first valuation***), that is the same valuation method used to value the trading stock at the end of the preceding income year; and

(ii) a different valuation method in accordance with an election made under section 70-50 of the *ITAA 1997* at the end of the income year, giving an amount (the ***second valuation***); and

(b) the first valuation exceeds the second valuation; and

(c) the ordinary income of the company or trust is reduced by the amount of any excess of the first valuation over the second valuation (the ***allowable deduction***); and

(d) the allowable deduction exceeds the difference (if any) in the value of the trading stock if its value at the end of the income year were worked out by using the same valuation method used for the first valuation.

(2) The amount by which the allowable deduction, referred to in paragraph (1)(c), is greater than the difference in the value of the trading stock, referred to in paragraph (1)(d), is an ineligible part of the allowable deduction.

11 Trading stock of primary production enterprise — election under s 70-50 of *ITAA 1997*

(1) For subsection 52ZZZO(5) of the Act, this section applies if:

(a) an entity carrying on a primary production enterprise values trading stock using:

(i) a valuation method at the start of an income year, giving an amount (the ***first valuation***), that is the same valuation method used to value the trading stock at the end of the preceding income year; and

(ii) a different valuation method in accordance with an election made under section 70-50 of the *ITAA 1997* at the end of the income year, giving an amount (the ***second valuation***); and

(b) the first valuation exceeds the second valuation; and

(c) the entity’s income from the enterprise is reduced by the amount of any excess of the first valuation over the second valuation (the ***allowable deduction***); and

(d) the allowable deduction exceeds the difference (if any) in the value of the trading stock if its value at the end of the income year were worked out by using the same valuation method used for the first valuation.

(2) The amount by which the allowable deduction, referred to in paragraph (1)(c), is greater than the difference in the value of the trading stock, referred to in paragraph (1)(d), is an ineligible part of the allowable deduction.

Schedule 1 Ineligible deductions for section 52ZZO of the Act

(subsection 5(1))

Part 1 Ineligible deductions: ITAA 1936

| Item | Provision | General description |
| --- | --- | --- |
|  | Section 82KZM | Expenditure by small business entities and individuals incurring non-business expenditure |
|  | Section 82KZMD | Business expenditure and non-business expenditure by non-individual |
|  | Section 82KZMF | Proportional deduction |
|  | Section 266-25 of Schedule 2F | Fixed trust may be denied tax loss deduction |
|  | Section 266-35 of Schedule 2F | Fixed trust may be denied debt deduction |
|  | Section 266-50 of Schedule 2F | Fixed trust — deducting part of a tax loss |
|  | Section 267-20 of Schedule 2F | Non-fixed trust may be denied tax loss deduction |
|  | Section 267-50 of Schedule 2F | Non-fixed trust — deducting part of a tax loss |

Part 2 Ineligible deductions: ITAA 1997

| Item | Provision | General description |
| --- | --- | --- |
|  | Section 25-20 | Lease document expenses |
|  | Section 25-25 | Borrowing expenses |
|  | Section 25-30 | Expenses of discharging a mortgage |
|  | Section 25-110 | Capital expenditure to terminate lease etc |
|  | Section 26-80 | Financing costs on loans to pay superannuation contribution |
|  | Section 26-85 | Borrowing costs on loans to pay life insurance premiums |
|  | Section 30-15 | Table of gifts or contributions that you can deduct |
|  | Section 32-20 | Fringe benefits |
|  | Section 32-25 | Deductions for losses and outgoings relating to entertainment |
|  | Section 36-15 | How to deduct tax losses of entities other than corporate tax entities |
|  | Section 36-17 | How to deduct tax losses of corporate tax entities |
|  | Section 36-40 | Deductions for amounts paid for debts incurred before bankruptcy |
|  | Section 40-25 | Deducting amounts for depreciating assets |
|  | Section 40-80 | When you can deduct the asset's cost |
|  | Section 40-285 | Balancing adjustments |
|  | Section 40-335 | Deduction for in-house software where you will never use it |
|  | Section 40-370 | Balancing adjustments where there has been use of different car expense methods |
|  | Section 40-455 | In-house software — how to work out your deduction |
|  | Section 40-645 | Electricity and telephone lines |
|  | Section 40-730 | Mining and quarrying — deduction for expenditure on exploration or prospecting |
|  | Section 40-735 | Deduction for expenditure on mining site rehabilitation |
|  | Section 40-750 | Deduction for payments of petroleum resource rent tax |
|  | Section 40-755 | Environmental protection activities |
|  | Section 40-830 | Project pools |
|  | Section 40-880 | Business related costs |
|  | Section 40-1005 | Deduction for expenditure for establishing trees in carbon sink forests |
|  | Section 40-1030 | Extra deduction for destruction of trees in carbon sink forest |
|  | Section 43-10 | Deductions for capital works |
|  | Section 43-40 | Deduction for destruction of capital works |
|  | Section 70-120 | Trading stock — capital costs of acquiring trees |
|  | Section 165-10 | Changing ownership or control of a company — deducting tax losses |
|  | Section 165-20 | Changing ownership or control of a company — deducting part of tax loss |
|  | Section 170-20 | Treatment of company groups — who can deduct transferred loss |
|  | Subdivision 328-D | Capital allowances for small business entities |

Schedule 2 Ineligible deductions for section 52ZZZO of the Act

(subsection 5(2))

Part 1 Ineligible deductions: ITAA 1936

| Item | Provision | General description |
| --- | --- | --- |
|  | Section 82KZM | Expenditure by small business entities and individuals incurring non-business expenditure |
|  | Section 82KZMD | Business expenditure and non-business expenditure by non-individual |
|  | Section 82KZMF | Proportional deduction |
|  | Section 266-25 of Schedule 2F | Fixed trust may be denied tax loss deduction |
|  | Section 266-35 of Schedule 2F | Fixed trust may be denied debt deduction |
|  | Section 266-50 of Schedule 2F | Fixed trust — deducting part of a tax loss |
|  | Section 267-20 of Schedule 2F | Non-fixed trust may be denied tax loss deduction |
|  | Section 267-50 of Schedule 2F | Non-fixed trust — deducting part of a tax loss |

Part 2 Ineligible deductions: ITAA 1997

| Item | Provision | General description |
| --- | --- | --- |
|  | Section 25-20 | Lease document expenses |
|  | Section 25-25 | Borrowing expenses |
|  | Section 25-30 | Expenses of discharging a mortgage |
|  | Section 25-110 | Capital expenditure to terminate lease etc |
|  | Section 26-80 | Financing costs on loans to pay superannuation contribution |
|  | Section 26-85 | Borrowing costs on loans to pay life insurance premiums |
|  | Section 30-15 | Table of gifts or contributions that you can deduct |
|  | Section 32-20 | Fringe benefits |
|  | Section 32-25 | Deductions for losses and outgoings relating to entertainment |
|  | Section 36-15 | How to deduct tax losses of entities other than corporate tax entities |
|  | Section 36-17 | How to deduct tax losses of corporate tax entities |
|  | Section 36-40 | Deductions for amounts paid for debts incurred before bankruptcy |
|  | Section 40-25 | Deducting amounts for depreciating assets |
|  | Section 40-80 | When you can deduct the asset's cost |
|  | Section 40-285 | Balancing adjustments |
|  | Section 40-335 | Deduction for in-house software where you will never use it |
|  | Section 40-370 | Balancing adjustments where there has been use of different car expense methods |
|  | Section 40-455 | In-house software — how to work out your deduction |
|  | Section 40-515 | Water facilities, grapevines and horticultural plants |
|  | Section 40-565 | Extra deduction for destruction of a horticultural plant or grapevine |
|  | Section 40-630 | Landcare operations |
|  | Section 40-645 | Electricity and telephone lines |
|  | Section 40-755 | Environmental protection activities |
|  | Section 40-830 | Project pools |
|  | Section 40-880 | Business related costs |
|  | Section 40-1005 | Deduction for expenditure for establishing trees in carbon sink forests |
|  | Section 40-1030 | Extra deduction for destruction of trees in carbon sink forest |
|  | Section 43-10 | Deductions for capital works |
|  | Section 43-40 | Deduction for destruction of capital works |
|  | Section 70-120 | Trading stock — capital costs of acquiring trees |
|  | Section 165-10 | Changing ownership or control of a company — deducting tax losses |
|  | Section 165-20 | Changing ownership or control of a company — deducting part of tax loss |
|  | Section 170-20 | Treatment of company groups — who can deduct transferred loss |
|  | Subdivision 328-D | Capital allowances for small business entities |
|  | Section 393-5 | Deduction for making farm management deposit |